

REMARKS

Entry of the Amendment submitted herewith is respectfully requested. It is submitted that this Amendment overcomes the rejections set forth in the Office Action dated December 7, 2009. Thus, this application should be in condition for allowance.

Claims 3, 5-8, 12, 25 and 26 are now present in this application. Claims 3, 5-8, 12, 25 and 26 are under rejection. Claim 26 is newly added. Claims 14-24 are withdrawn from consideration as being directed to a non-elected invention.

Grounds for the amendment of claim 25:

- 1) “cylindrical (wind tunnel)”: based on “The wind tunnel 31 in the container 18 is formed cylindrically,...” (3<sup>rd</sup> para. page 25 in originally filed specification);
- 2) “(a container) closed from the outside air”: based on “The container 18 has structure with an inner space thereof being closed from the outside air...”(page 25, lines 2-3 in originally filed specification);
- 3) “via a microorganism injection tube connected at the outside of the container”: based on “On one side of the container 18 with ....sprayer 11.” (page 25, lines 5-11, in originally filed specification);
- 4) “by means of taking in the air containing microorganisms via a sampling tube into a microorganism sampler at the outside of the container,”: based on “The wind tunnel 31 in the container 18 ....to both ends thereof” (page 25, 4<sup>th</sup> para. in originally filed specification) and “the other end of the microorganism sampling tube 13 is connected to the microorganism sampler 6 at the outside of the container 18.” (3<sup>rd</sup> para. page 26 in originally filed specification);

In addition, new claim 26 was prepared based on:

- 1) page 24, "Third Embodiment": "In comparison with the second embodiment, Fig. 8 has a feature in providing a wind tunnel.....";
- 2) page 39, "Example 5"; The container 18 of the apparatus 20 for evaluating elimination of microorganisms was so formed to be square pole shape of 8cm and 30cm length.;"
- 3) page 42, 2<sup>nd</sup> para.: "The ion generation element 12 was attached and fixed to one end of an acrylic cylindrical container 31 (i.e., the wind tunnel 31) of 55mm inner diameter and 200mm length."

Technical differences between the present invention and the citations:

As apparent from amended claim 25, the present invention relates to a method for evaluating the elimination of microorganisms, comprising:

- a) installing a cylindrical wind tunnel inside a container closed from the outside air;
- b) forming a passage of air containing microorganisms inside the wind tunnel;
- c) supplying the air containing microorganisms in the space inside of the wind tunnel from one side of the wind tunnel via a microorganism injection tube connected at the outside of the container;
- d) carrying out the sterilizing of the microorganisms inside the inner space of the wind tunnel to irradiate particles comprising ions to the air containing microorganisms;
- e) sampling the microorganisms from the air containing microorganisms after the irradiation of the particles from the other side of the wind tunnel by means of taking in the air containing microorganisms via a sampling tube into a microorganism sampler at the outside of the container; and
- f) measuring the concentration of activity of the sampled microorganisms to evaluate the performance of elimination of the microorganisms of said particles from the result of measurements.

To be more specific, the present invention is characterized in that:

- a) the air containing microorganisms is supplied from the outside of the container, via a microorganism injection tube connected at the outside of the container, into the wind tunnel disposed inside the container;
- b) within the wind tunnel, particles comprising positive and negative ions are irradiated to the air containing microorganisms for the purpose of sterilizing the microorganisms contained in the air; and
- c) after sterilizing the air containing microorganisms, the resultant air is taken in for sampling from the other side of the wind tunnel to the outside of the container.

On the other hand, none of the citations (Menzies et al; WO01/87364; Osawa; and Rose et al.) discloses the above-described features of the present invention. In view of the amendments and explanation presented hereinabove, it is respectfully submitted that the claims in their present form are patentable, whether the references are considered alone or in combination.

With respect to the anticipation rejections under 35 USC 102(b), it is to be noted that a claim is anticipated "only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. vs. Union Oil Co. of California, 2 USPQ2d 1051, 1053 (Fed Cir. 1987).

With regard to the rejections based on obviousness under 35 USC 103(a), it is to be noted that the cited references do not teach, disclose or motivate one skilled in the art to provide the claimed invention as recited in the claims.

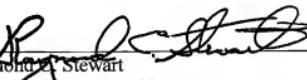
Favorable action is requested.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Raymond C. Stewart, Registration No. 21,066, at the telephone number of the undersigned below to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Director is hereby authorized in this, concurrent, and future replies to charge any fees required during the pendency of the above-identified application or credit any overpayment to Deposit Account No. 02-2448.

Dated: June 4, 2010

Respectfully submitted,

By   
Raymond J. Stewart  
Registration No.: 21,066  
BIRCH, STEWART, KOLASCH & BIRCH, LLP  
8110 Gatehouse Road, Suite 100 East  
P.O. Box 747.  
Falls Church, VA 22040-0747  
703-205-8000